No. 85-1695



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

SOCIETE NATIONALE INDUSTRIELLE AEROSPATIALE and SOCIETE DE CONSTRUCTION D'AVIONS DE TOURISME,

*Petitioners,*

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IOWA,

*Respondent.*

(DENNIS JONES, JOHN and ROSA GEORGE, *Real Parties in Interest*)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

## BRIEF OF *AMICUS CURIAE* THE ITALY-AMERICA CHAMBER OF COMMERCE, INC. IN SUPPORT OF PETITIONERS

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### Interest of *Amicus Curiae*

The Italy-America Chamber of Commerce, Inc. (the "Chamber") is a voluntary membership organization which has been active in the promotion of trade relations between the United States and Italy since 1887. Members include importers, exporters, agents of Italian businesses trading in the United States, United States businesses with subsidiaries or business in Italy, banks, shipping lines, airlines, freight forwarders, and advertising and public relations

firms. The Chamber is submitting this brief with the consent of petitioners and respondents, real parties in interest.

The Chamber has an interest in this appeal because the failure of American courts to exercise judicial restraint in favor of the procedures set forth in the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature* March 18, 1970, 28 U.S.C.A. § 1781 (Supp. 1986), 23 U.S.T. 2555, T.I.A.S. No. 7444 (entered into force between the United States and Italy on Aug. 21, 1982) ("Hague Evidence Convention" or "Convention"), is placing an increasing strain on trade relations between the United States and Italy.

The litigiousness of American society, the free rein given to attorneys to obtain evidence without direct judicial participation, the vast resources routinely allocated to litigation in the United States, and the significant additional expense, logistical burden and uncertainty of defending lawsuits in a different language and a unique legal culture cause many foreign businesses, including small and medium-sized companies with attractive and competitive products and services, to take their business elsewhere. Many businesses which do begin to sell to Americans abandon the market after their first shocking experience not with substantive legal principles but with American litigation procedures and costs. This results in business losses or lost business opportunities for American and foreign companies alike and poses a threat to the commercial climate necessary for trade upon which members of the Chamber depend to do business.

The Hague Evidence Convention was intended to ease the international friction which developed in cases in which the courts of two nations with fundamentally different legal systems have legal responsibilities. If American courts use the Convention, they will eliminate a barrier to trade and a



source of international friction. If American courts do not use it, judicial cooperation will give way to a reactionary cycle. That cycle may include revocation of the Convention, legislation or additional reservations limiting the Convention's scope or usefulness, or refusals to enforce the judgments of American courts. It is in the interest of the members of the Chamber and of all entities or individuals engaged in trade with civil law countries to prevent such a cycle.

## Statement

This case arose from a plane crash near New Virginia, Iowa, on August 19, 1980. (Pet. 4)* Respondents allege that the plane designed and manufactured by petitioners was defective and seek damages for personal injuries on a products liability theory. *Id.*

Respondents served on petitioners several requests for admissions, a request for production of documents, and a set of interrogatories. *Id.* Petitioners moved for a protective order to require that evidence be taken in accordance with the provisions of the Hague Evidence Convention. *Id.* Petitioners informed the court that, to the extent they had documents or information responsive to respondents' requests, they were located in France, and that the French "blocking statute" (Code pénal art. 538) prohibited their disclosure except in accordance with the Convention. *Id.* The magistrate denied the motion and explained that his

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* References to the petition for writ of certiorari in *Societe Nationale Industrielle Aerospatiale* v. *United States District Court*, will be cited as "Pet. —"; references to the Appendix to that Petition will be cited as "Pet. App. —"; references to the opinion below, *In re Societe Nationale Industrielle Aerospatiale*, 782 F.2d 120 (8th Cir.), *cert. granted sub nom. Societe Nationale Industrielle Aerospatiale* v. *United States District Court*, 106 S. Ct. 2888 (1986) will be cited as "Op. —."

decision was based upon his "concern with the impediment to discovery which the Hague Evidence Convention places on litigation in American courts." (Pet. App. B at 24a) The magistrate also speculated that the French blocking statute was not strictly enforced in France. (Pet. App. B at 23a-24a)

The Court of Appeals for the Eighth Circuit held that the Convention did not apply to the discovery requests because the court had personal jurisdiction over the foreign litigant. (Op. 127) The Eighth Circuit recognized that the effect of its decision would be to restrict the scope of the Convention to requests for evidence from individuals and entities which American courts find not to be subject to their jurisdiction or compulsory powers. (Op. 125) The court cited no authority for such a restriction, either in the language or in the history of the treaty; it relied on decisions of collateral courts which, in turn, had failed to cite any authority in the treaty language or history. (Op. 125-126) The Court of Appeals also held that considerations of comity did not require any deference to the French blocking statute and ordered that discovery proceed pursuant to the Federal Rules of Civil Procedure ("Federal Rules"). (Op. 127)

## Summary of Argument

The Hague Evidence Convention imposes binding obligations on all signatories to use it.

The purpose of the Convention was to establish a comprehensive system of obtaining evidence located abroad and to end international friction. The specific intent of the President and the Senate was to promote the Convention's procedures as the principal means of obtaining evidence located abroad. The purpose of the Convention and



the intent of the United States can only be served, therefore, if American courts and litigants are required to use it.*

The Convention must be construed to require its use or it lacks the reciprocity essential to any treaty. An interpretation which construes the Convention as binding upon an American court only when the court finds that it does not have personal jurisdiction over the foreign individual or entity with control over the evidence deprives civil law signatories of the benefit of their bargain and renders the Convention meaningless for all practical purposes.

The language of the Convention reflects the intent of the signatories to limit evidence-taking procedures to those set forth in the Convention and to any other procedures expressly allowed by the requested state in its internal law or practice or in other treaties. Procedures not allowed under the Convention or otherwise accepted by the requested state are not available to American courts or litigants.

The Convention is not, as some courts have suggested, an optional alternative to the Federal Rules. It creates special rules for the special circumstance of obtaining evidence located abroad. To the extent there is any conflict between the Convention and the Federal Rules, the obligation of the American court is to construe the Federal Rules so that they do not conflict with the subsequent and more specific treaty; it is not to distinguish and limit the treaty so that it does not affect the earlier and more general Federal Rules.

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* Although the issue is presented to the Court in the context of discovery requests in a federal court, the decision of the Court will extend to discovery in state court proceedings by virtue of the Supremacy Clause. U.S. Const. art. VI, cl. 2.

Judicial restraint is needed to effectuate the purpose of the treaty and the intent of the signatories. A substantial body of case law demonstrates, however, that lower courts will not exercise restraint unless this Court requires them to do so. What is needed is a ruling which directs American courts not to enter orders compelling discovery under domestic rules at least until the record is clear that the parties have exhausted the Convention's procedures.

Use of the Convention would not create an impediment to litigation in American courts. There is substantial evidence that the Convention's procedures produce the needed results when attorneys use them with the same degree of care as is needed to obtain discovery under domestic rules.

Neither "minimum contacts" jurisdiction nor the concept of compulsory taking of evidence without direct judicial participation has developed in the internal law or practice of the United States' civil law trading partners. As a result, the exercise of jurisdiction to compel American-style discovery from foreign parties with no actual physical presence in the United States has become a principal source of friction between otherwise friendly nations. Judicial restraint is especially necessary, therefore, when an American court's jurisdiction is based on minimum contacts.

General principles of comity and customary international law are not alternatives to use of the Convention, and comity analysis is not appropriate unless the Convention's procedures have been exhausted. Until that time, comity is just another reason why American courts must exercise judicial restraint and litigants must resort to the Convention.



# ARGUMENT

## I.

## The Hague Evidence Convention Imposes Binding Obligations on All Signatories to Use It.

### A. The Purpose of the Convention Was to Establish a Comprehensive System of Obtaining Evidence Located Abroad and to End International Friction.

The purpose of the Convention was to establish an international system of obtaining evidence which was "tolerable" to the state of execution and which produced evidence "utilizable" in the requesting court. Amram, *Explanatory Report on the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters,* S. Exec. Doc. A, 92d Cong., 2d Sess. 11 (1972) ("Amram, *Explanatory Report*"); Message from the President, Letter of Transmittal, S. Exec. Doc. A at III ("Letter of Transmittal"); Report of the United States Delegation to the Hague Convention, *reprinted in* 8 I.L.M. 785, 806 (1969) ("1969 U.S. Report"). Some civil law countries already had a long tradition of extending judicial assistance to American courts, but even in those states the Convention substantially improved the mechanisms for obtaining such assistance and extended assistance into new areas. *Compare* Gori-Montanelli & Botwinik, *International Judicial Assistance — Italy,* 9 Int'l Law. 717 (1975) (judicial assistance prior to Italy's ratification of the Convention) *with* Instrument of Ratification (Italy) (entered into force Aug. 21, 1982), *reprinted in* 28 U.S.C.A. § 1781, n.6a (Supp. 1986) (ratifying the Convention and allowing, *inter alia,* for Italian judicial compulsion in aid of consular and commissioner depositions).

The United States Government initiated the negotiations which led to the Convention, and in the final version

obtained almost everything it requested from the other participants. *See* 1969 U.S. Report at 805; Amram, *Explanatory Report* at 13. American drafters played a leading role in formulating the final product. Radvan, *The Hague Convention on Taking of Evidence Abroad in Civil or Commercial Matters: Several Notes Concerning its Scope, Methods and Compulsion*, 16 N.Y.U. J. Int'l L. & Pol. 1031, 1031 n.2 (1984) ("Radvan, *Hague Convention*").

The United States Delegation, President and Senate all hailed the Convention as a major step forward in international judicial cooperation and as *the* method of obtaining evidence from foreign states without encountering the international friction associated with prior attempts to apply American discovery procedures abroad. *See* Letter of Transmittal; Letter of Submittal from Secretary of State William P. Rogers to the President Regarding the Evidence Convention, S. Exec. Doc. A at VI; Amram, *Explanatory Report* at 27. The Senate Committee predicted that letters of request would become a "principal means of obtaining evidence abroad." S. Exec. Rep. No. 25, 92d Cong., 2d Sess. 1 (1972).

**B. The Convention Must Be Construed to Require Its Use or It Lacks Reciprocity.**

This Court has recognized that a treaty is contractual in nature, and that treaty obligations should be construed "so as to effect the apparent intention of the parties to secure equality and reciprocity between them." *Factor* v. *Laubenheimer*, 290 U.S. 276, 293 (1933).

The intent of the United States in signing and ratifying the Convention was to improve the system of international judicial cooperation, to facilitate the American discovery process, and to require civil law countries to amend their civil codes to accommodate the needs of American courts.



*See* Letter of Transmittal; Amram, *Explanatory Report* at 11.

The civil law countries negotiated and ratified the Convention primarily in order to have some reasonable limits placed upon the American exercise of extraterritorial jurisdiction to obtain evidence located in civil law countries. *See* 1969 U.S. Report at 806-07; *Philadelphia Gear Corp.* v. *American Pfauter Corp.*, 100 F.R.D. 58, 60 (E.D. Pa. 1983); Oxman, *The Choice Between Direct Discovery and Other Means of Obtaining Evidence Abroad: The Impact of the Hague Convention*, 37 U. Miami L. Rev. 733, 767 (1983) ("Oxman, *Impact of the Hague Convention*").

A judicial interpretation which construes the Convention as binding only when an American court finds that it does not have jurisdiction at all is, from the civil law perspective, an attempt to deprive civil law countries of the benefit of their bargain. *See* Radvan, *Hague Convention* at 1033, n.7 & 1036. That attempt is quite successful when the foreign national is denied any meaningful right of appeal. *See, e.g., Boreri* v. *Fiat S.p.A.*, 763 F.2d 17, 20 (1st Cir. 1985).

The language and history of the Convention do not lend any support to an interpretation which reduces the Convention to an optional device whenever the court of origin has jurisdiction over the person or entity with custody of or control over the evidence. The discussion among the delegates regarding the scope of the treaty concerned the meaning of the term "civil or commercial matters," and never touched upon the question of jurisdiction. *See* Report on the Second Meeting of the Special Commission on the Operation of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, *reprinted in* 24 I.L.M. 1668, 1671-72 (1985) ("1985 Report"); Report of the United States Delegation

to the Special Commission on the Operation of the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, *reprinted in* 17 I.L.M. 1417, 1417-18 (1978) ("1978 U.S. Report"); Report of the Special Commission on the Operation of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *reprinted in* 17 I.L.M. 1425, 1426-27 (1978) ("1978 Report"); Amram, *Explanatory Report* at 11 & 27; 1969 U.S. Report at 808.

It is improbable that the representatives of states extremely sensitive to American assertions of jurisdiction would neglect to mention the concept of jurisdiction if it had anything to do with the scope of the treaty. *See* Point II. C *infra* pp. 15-16.

It is illogical that the various states would go to the trouble of negotiating and ratifying a treaty, and that civil law countries would establish Central Authorities and amend their civil codes, if they thought the United States would use the treaty only when an American court found that it did not have jurisdiction over the foreign national.

It is inconceivable that civil law countries would agree to a treaty which obligated them to amend their civil codes and to accommodate common law practices, unless they obtained as consideration a commitment from the United States to use the treaty.

### C. The Convention's Rules Must Be Followed Unless the Requested State Expressly Allows Other Procedures.

Articles 27 and 28 of the Convention provide that a contracting state may permit procedures for obtaining evidence within its territory even if those procedures are not included in the Convention. Convention arts. 27-28. Additional procedures are available if they are allowed under



the internal law or practice of the requested state or under a separate agreement. Different procedures are *not* permitted if they are not available under the local law and procedures of the requested state, or if they are not made available under the terms of another diplomatic agreement. *See* Amram, *Explanatory Report* at 39-40; Comment, *The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters: The Exclusive and Mandatory Procedures for Discovery Abroad*, 132 U. Pa. L. Rev. 1461, 1476-77 (1984) ("Comment, *Mandatory Procedures*").

### D. The Convention Establishes Special Procedural Rules Which Are Equally as Binding as the Federal Rules of Civil Procedure.

The obligation of American courts is to interpret a statute so that it does not violate a subsequent treaty or interfere with foreign law. *See* Restatement (Third) of the Foreign Relations Law of the United States § 321 comment a (Tent. Final Draft 1985) ("Restatement (Third)") ("international obligations survive any restrictions in domestic law"); *see also* Restatement (Second) of the Foreign Relations Law of the United States § 138 comment a (1965) ("Restatement (Second)"). The obligation of American courts is not to limit the application of a treaty so that it does not conflict with a prior statute. Yet that is precisely what the majority of lower federal courts have done in considering the Convention. Pet. 11 & n.23 and cases cited therein.

A treaty creates special rules for international relationships and is presumed to leave domestic law intact to the extent domestic law applies to internal matters. *See* Heck, *U.S. Misinterpretation of the Hague Evidence Convention*, 24 Colum. J. Transnat'l L. 230, 256-57 (1986) ("Heck, *U.S. Misinterpretation*").

When a treaty and a statute do conflict, the treaty supersedes the statute in the international context because it is the more specific rule. *See* Akehurst, *The Hierarchy of the Sources of International Law*, 1974-75 Brit. Y.B. Int'l L. 273; Comment, *Mandatory Procedures* at 1485. Moreover, a later treaty supersedes an earlier statute to the extent the two are inconsistent. *See Whitney* v. *Robertson*, 124 U.S. 190, 194 (1888); *Voorhees* v. *Fischer & Krecke*, 697 F.2d 574, 575-76 (4th Cir. 1983); Restatement (Second) § 141(1).

There is no real conflict, however, between the Federal Rules and the Convention because they share the same basic goal: to obtain evidence in a form utilizable at trial. *See* Heck, *U.S. Misinterpretation* at 256-57. The Federal Rules provide the general statutory framework for obtaining evidence in federal courts, and the Convention sets forth specific procedures for obtaining evidence with a minimum of interference in the interests of other signatories. Each set of rules is equally "binding" upon the federal courts. The Convention conflicts with the Federal Rules only if a federal court erroneously insists upon compliance with general domestic rules when more specific international rules are applicable.

## II.

### Judicial Restraint Is Needed to Effectuate the Purpose of the Hague Evidence Convention.

#### A. American Courts and Litigants Will Use the Convention Only if This Court Requires Judicial Restraint.

When the Special Commission on the Operation of the Hague Evidence Convention met in 1985 to assess the operation of the Convention, it concluded that, on the whole, the application of the Convention was satisfactory



but the Convention was insufficiently used. The representatives "deplored" this situation. 1985 Report at 1670.

In order for the Convention's procedures to work in American lawsuits, American lawyers must use them. The case law demonstrates, however, that most American litigants are unwilling to use the Convention voluntarily and that courts have been very reluctant to require the Convention's use. *See, e.g., In re Messerschmitt Bolkow Blohm GmbH*, 757 F.2d 729 (5th Cir. 1985), *cert. granted sub nom. Messerschmitt Bolkow Blohm GmbH* v. *Walker*, 106 S. Ct. 1633 (1986); *In re Anschuetz & Co.*, 754 F.2d 602, 611, 615 (5th Cir. 1985), *petition for cert. filed sub nom. Anschuetz & Co.* v. *Mississippi River Bridge Authority*, 54 U.S.L.W. 3084 (U.S. Aug. 13, 1985) (No. 85-98); *Lowrance* v. *Michael Weinig, GmbH, Kommanditgesellschaft*, 107 F.R.D. 386 (W.D. Tenn. 1985); *Work* v. *Bier*, 106 F.R.D. 45 (D.D.C. 1985); *Slauenwhite* v. *Bekum Maschinenfabriken, GmbH*, 104 F.R.D. 616 (D. Mass. 1985); *International Society for Krishna Consciousness* v. *Lee*, 105 F.R.D. 435 (S.D.N.Y. 1984); *Graco, Inc.* v. *Kremlin, Inc.*, 101 F.R.D. 503, 517-24 (N.D. Ill. 1984); *Wilson* v. *Lufthansa German Airlines*, 108 A.D.2d 393, 489 N.Y.S.2d 575 (1985); *Dorin* v. *Club Mediterranee, S.A.*, No. 4777/82 (N.Y. Sup. Ct. Jan. 5, 1983) (Hague Evidence Convention does not apply because the French defendant "has not denied that it does business in this state . . . ."), *aff'd mem.*, 93 A.D.2d 1007, 462 N.Y.S.2d 524 (1983), *appeal dismissed and cert. denied*, 105 S. Ct. 286 (1984). In each of the decisions cited above, the court held that the Convention did not apply where the requested party was subject to the court's jurisdiction. *See also* Radvan, *Hague Convention* at 1053 & n.111.

The intent of the United States and of the other contracting states will be served only if this Court directs American

courts to refer litigants to the Convention in the first instance and precludes them from compelling discovery under domestic rules until the parties have exhausted their remedies under the Convention. Only such a ruling will allow the Convention to develop into the broad system of international judicial cooperation it was intended to be.

**B. Use of the Convention Will Not Create an Impediment to Discovery.**

The magistrate's "concern with the impediment to discovery which the Hague Evidence Convention places on litigation in American courts" (Pet. App. B 24a) reflects the widespread assumption among American judges and lawyers that resort to the Convention will lead to unreasonable delay, and that an attempt to obtain evidence through the Convention would be a futile exercise. There is no basis for this assumption, and there is substantial evidence to the contrary.

Reservations under Article 23 of the Convention notwithstanding, documents may be obtained in the normal course of a civil law court's execution of a letter of request. 1985 Report at 1672; *see* Heck, *U.S. Misinterpretation* at 244-45 (discussing the German Code of Civil Procedure [Zivilprozessordnung] §§ 424-25); Shemanski, *Obtaining Evidence in the Federal Republic of Germany: The Impact of the Hague Evidence Convention on German-American Judicial Cooperation*, 17 Int'l Law. 465, 482-83 (1983) ("Shemanski, *Obtaining Evidence*").

The Convention's procedures work when they are used by attorneys who take the time to learn them and to use them properly. *See* Platto, *Taking Evidence Abroad for Use in Civil Cases in the United States—A Practical Guide*, 16 Int'l Law. 575, 579-85 (1982); Radvan, *Hague Convention* at 1040; Shemanski, *Obtaining Evidence at* 482-83; *see also* Borel & Boyd, *Opportunities for and Obstacles to Obtaining Evidence for Use in Litigation in the United States*, 13 Int'l Law. 35, 37 (1979).



Moreover, the process of refining and expanding the Convention is continuing and holds great promise for the future. *See* 1985 Report at 1672; 1978 U.S. Report at 1417, 1433-34.

Under the Convention, American courts and litigants have an opportunity for the first time to oblige foreign courts to accommodate American procedures to the maximum extent possible under local law. *See* Convention art. 9. Prior to the Convention, as a matter of international law, American courts never had the authority to insist on extraterritorial application of their procedural law. *See* Brief for the United States as *Amicus Curiae* at 9 n.10, *Club Mediterranee, S.A.* v. *Dorin, appeal dismissed and cert. denied*, 105 S. Ct. 286 (1984), *reprinted in* 23 I.L.M. 1332, 1338 n.10 (1984), *citing* Oxman, *Impact of the Hague Convention* at 751; Heck, *U.S. Misinterpretation* at 235 ("Procedural law [is] traditionally a strict matter of local law . . .").

It is no wonder, therefore, that the United States Government lobbied for the treaty and hailed it as a great step forward in international judicial cooperation. The only mystery is why American courts choose to ignore it.

**C. Judicial Restraint Is Especially Needed When Jurisdiction Is Based Upon Minimum Contacts.**

The reaction of civil law states to orders compelling their nationals to submit to discovery under domestic American rules is particularly bitter when a court bases its action upon expansive American concepts of "long arm" jurisdiction based on "minimum contacts."

Minimum contacts jurisdiction is a relatively recent phenomenon even in American jurisprudence. *See International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945). It coincided with the expansion of international commerce. However, neither minimum contacts jurisdiction nor the concept of compulsory taking of evidence without direct judicial involvement has developed in the internal law of the United States' civil law trading partners. As a result, the frequent exercise of jurisdiction to compel American-style discovery from parties with no actual physical presence in the United States has become a principal source of friction between otherwise friendly nations. *See* Restatement (Third) § 437 reporter's note 1 (Tent. Draft No. 7, 1986); Carter, *Obtaining Foreign Discovery and Evidence for Use in the United States: Existing Rules and Procedures,* 13 Int'l Law. 5, 5-7 (1979); Onkelinx, *Conflict of International Jurisdiction: Ordering the Production of Documents in Violation of the Law of the Situs,* 64 Nw. U.L. Rev. 487, 506-25 (1979); Robinson, *Compelling Discovery and Evidence in International Litigation,* 18 Int'l Law. 533, 533-34 (1984) ("Robinson, *Compelling Discovery*").

Davis Robinson, when he was Legal Advisor to the United States Department of State, described the typical foreign reaction to expansive assertions of jurisdiction in the following terms: "leaders like Prime Minister Thatcher, looking at the assertion of U.S. rights to regulate or control conduct within their own country, are likely to be heard asking, 'who is in charge here?'." Robinson, *Compelling Discovery* at 534.

When American courts exercise broad jurisdictional powers not only to regulate substantive conduct but to specify litigation procedures to be used abroad, international friction is inevitable and sets back the cause of international judicial cooperation.



## III.

**Principles of Comity and Customary International Law Require Use of the Convention in the First Instance.**

Comity entails a consideration of the rights of the litigants "having due regard both to international duty and convenience . . . ." *Hilton* v. *Guyot,* 159 U.S. 113, 164 (1895).

General principles of international law provide that, when the courts of two countries have claims to jurisdiction over the same controversy, the American court must determine whether or not to exercise jurisdiction by evaluating its own as well as the other state's interest. *See* Restatement (Third) § 403(3) (Tent. Draft No. 7, 1986).

An American court's obligation is not limited, however, to evaluating interests. Under comity analysis, even when an American court rightly concludes that American interests outweigh foreign interests, the court must make a good faith effort to accommodate the conflicting interests of the other state and adopt compromise solutions designed to reconcile domestic and foreign interests. *See* Restatement (Second) § 40(a).

The Convention sets forth those compromise solutions. *See* Point I. A *supra* pp. 7-8. Until the Convention's procedures have been used, American courts should look no further.

## CONCLUSION

During the 1978 meeting of the Special Commission on the Operation of the Hague Evidence Convention, France presented a positive and exciting vision of international judicial cooperation. The French expert proposed that the Central Authorities be "tighten[ed] up . . . in order to obtain other mutual services such as information on the status of a proceeding, on the content of foreign law, etc." 1978 Report at 1434.

The power to realize France's vision of expanding international judicial cooperation lies with this Court. If the Court requires that American courts exercise judicial restraint, then the international system will have a chance to function, friction will give way to understanding, and the interest in obtaining evidence in a specific case will coincide with the broader public interest. If the Court allows American courts to continue to ignore the treaty, international judicial cooperation will be an idea whose time has come, and gone.

For the reasons set forth, petitioners are entitled to a decision in their favor.

Respectfully submitted,

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